



Missouri Department of Natural Resources

Clean Water Commission Water Protection Program

Meeting by Conference Call

June 16, 2005

MISSOURI CLEAN WATER COMMISSION MEETING

June 16, 2005

Teleconference

1101 Riverside Drive

Jefferson City, MO

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
William Easley, Commissioner, Missouri Clean Water Commission
Paul E. Hauser, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Ron Hardecke, Commissioner, Missouri Clean Water Commission

Edward Galbraith, Director of Staff, Missouri Clean Water Commission
Bill Bryan, Counsel, Missouri Clean Water Commission
Marlene Kirchner, Secretary, Missouri Clean Water Commission

Leon Alderman, EPA, Kansas City, Kansas
Craig AuBuchon, Washington University Law Clinic, St. Louis, Missouri
Dorris Bender, City of Independence, Independence, Missouri
Nonie Dudley, USDA Rural Development, Columbia, Missouri
Robert Brundage, Newman, Comley & Ruth, Jefferson City, Missouri
Melissa Coleman, EPA Region 7, Kansas City, Kansas
Kerry Cordray, Missouri Department of Natural Resources, Jefferson City, Missouri
Ray Cunio, Citizens for Private Property Rights, Sullivan, Missouri.
Aimee Davenport, Missouri Department of Natural Resources, Jefferson City, Missouri
John DeLashmit, EPA Region 7, Kansas City, Kansas
Ted Heisel, MO Coalition for the Environment, St. Louis, Missouri
Bob Hentges, Public Utility Alliance, Jefferson City, Missouri
Leslie Holloway, Missouri Farm Bureau, Jefferson City, Missouri
Dave Kindelspire, Missouri Department of Natural Resources, Jefferson City, Missouri
Angel Kruzen, Missouri Watershed Coalition, Mountain View, Missouri
Bonnie Liscek, EPA Region 7, Kansas City, Kansas
Maxine Lipeles, MO Coalition for the Environment, St. Louis, Missouri
John Lodderhose, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Chris Maune, Missouri Department of Natural Resources, Jefferson City, Missouri
Tina Montez, Empire District Electric Company, Joplin, Missouri
Susan Myers, Urban Areas Coalition, St. Louis, Missouri
Terry Satterlee, Lathrop & Gage, Springfield, Missouri
Candy Schilling, Missouri Department of Natural Resources, Jefferson City, Missouri
Phil Schroeder, Missouri Department of Natural Resources, Jefferson City, Missouri
Ryan Schuler, Missouri American Water, Chesterfield, Missouri

Becky Shannon, Missouri Department of Natural Resources, Jefferson City, Missouri
David Shorr, Lathrop & Gage, Jefferson City, Missouri
Cynthia Smith, Missouri Department of Natural Resources, Jefferson City, Missouri
Martha Steinkamp, EPA Region 7, Kansas City, Missouri
Trent Stober, MEC Water Resources, Columbia, Missouri
Bob Veenstra, URS Corp./St. Louis RCGA, St. Louis, Missouri

Chairman Herrmann opened the meeting. Mr. Ed Galbraith, Director of the Water Protection Program, facilitated introductions of those in attendance in Jefferson City and those on the phone. Mr. Galbraith reported at the May 4, 2005 Clean Water Commission meeting, the Commissioners voted to extend the public comment period to August 28, 2005 in order to increase the opportunities for public comment, including, but not limited to Use Attainability Analyses (UAAs) on Whole Body Contact Recreation. After the meeting, staff discussions with the Secretary of State's Office revealed that continuing to take public comments, even informally, up to that time could jeopardize the Commission's ability to file a final order of rulemaking in a timely fashion. Because the Secretary of State requires that the Commission file a final action within 90 days from the end of the public comment period, and the Joint Committee on Administrative Rules requires a filing within 30 days prior to that 90 days, there are really only 60 days from the end of July 14 to take final action. Extending the public comment period to the end of August would have proven unattainable in terms of the staff getting the comments processed and making a recommendation to the Commission.

On May 27, 2005, the Missouri Coalition for the Environment apprised the Water Protection Program of their desire that the public be afforded a 45-day window of opportunity to review and comment on all UAAs to be considered under the current rulemaking. He understands the Coalition's desire to be that if a UAA is going to end up in a recommendation to remove whole body contact, that the recommendation be subject to a 45 day public comment period.

Mr. Galbraith has had some discussions with EPA on this matter because there was confusion over when the department was going to accept public comment and what deadline and what would be the opportunity for review of UAAs. He felt it was necessary to convene the Commission to discuss the issue and possibly get their direction and input.

Commissioner Hauser moved that the department proceed with adjusting the public comment period that Mr. Galbraith suggested so the timeline is not jeopardized.

Chairman Herrmann added if the department puts a deadline of July 14, which is the end of the public comment period that's published in the Missouri Register, that is the last date the department is going to accept any UAA's for this rulemaking.

Mr. Galbraith stated the department could make every effort to post UAAs on the website quickly, and then allow 30 days for inputting comment on those UAA's, not necessarily the staff recommendation, but just the UAA itself, and that would get us to August 16 or 17. That would give staff enough time to prepare final a recommendation for the Commission in time for the

September 7 meeting. It wouldn't jeopardize the rulemaking nor the timeline to meet EPA's time frame.

Commissioner Hardecke asked if EPA concurred that there's no problem with that.

Mr. Leo Alderman, EPA Region 7, stated the standard is going to be use designation in the rule, not the UAA. The critical point of comment is actually use designation changes.

Ms. Martha Steincamp, EPA Region 7, stated what Mr. Alderman said is exactly right and what EPA acts on is the use designation proposal. That's what the public has to have the opportunity to comment on; what the Commission's decision is and then make comments on it. That information, submitted to EPA, is what they review and decide if they will approve or disapprove what the Commission came up with.

Ms. Steincamp added if the public has not had an opportunity to comment on what comes out of the September 7 Commission meeting, that may jeopardize EPA's approval of the regulation.

Mr. Galbraith stated if the public comment period ends on July 14 and that's the last day to receive a UAA, staff could turn around their recommendations and post those by August 3 and then allow 21 days for review until August 24. That would give staff a week to take those comments, revise their recommendations and get them to the Commission by August. That would give the Commission one week to review in preparation for the September 7 meeting.

Ms. Leslie Holloway, Missouri Farm Bureau, stated she understands that there are legal implications for the indecisions and many deadlines have no flexibility. She pointed out that the protocol that was developed, that was referred to earlier, laid out some specific guidelines for public participation. Many people were involved in hours of meetings at which that protocol was developed.

Ms. Holloway added the decision about whether to increase the time for public comment would be a change from the protocol as Mr. Galbraith points out. She does not agree with the comment, and understands that Mr. Galbraith is trying to take into account all the concerns. She felt that the way the protocol came out was a pretty well thought out decision and had participation from a wide variety of interested parties. They didn't think about an additional time frame early in the process. The first round of UAA's is going to be very critical because of the litigation and deadlines that are in place. She is concerned about changing the deadline, what impact that would have on those UAA's that are underway. Not only those being conducted by DNR, but those being conducted by other parties as well, given the special significance of the first round of UAA's. She asked for more information in regard to what is being proposed to the Commission by staff in terms of how that might impact the work that is underway on UAA's.

Ms. Holloway stated UAAs can be submitted any time. How many of them are going to be considered before the actual first decision on the designation is made?

Mr. Galbraith replied they have targeted approximately 550 stream segments through contractors and staff who they have redirected towards performing UAA's. He can't say that they will get to all those by July 14.

Commissioner Perry asked what happens to the UAA's that do not make the July 14th deadline? Is there a schedule or are they going to start just kind of dribbling in on a steady basis? Are we going to have a UAA be part of every Water Commission meeting from then on out?

Mr. Galbraith replied that staff would gather those up as part of the next rulemaking. The Commission would be faced with policy decisions at that point when there is a pending UAA that's not part of rulemaking.

Commissioner Perry asked if they would be up for public review then?

Mr. Galbraith replied they would go through public review as part of the subsequent rulemaking process.

Mr. Phil Schroeder, Water Quality Monitoring and Assessment, commented staff would follow the protocol in the way it's spelled out, that whenever the UAA is received and once those reviews are completed, they will roll the UAA findings in along with the Water Quality Standards Triennial Review, which is always held to discuss what areas of water quality standards will be targeted for the next rulemaking. Those meeting go for months talking about all types of issues.

Mr. Schroeder added most UAAs are evaluating Criterion Two, which is the study of the depth of the streams. Staff will not look at social/economic analysis, chemistry of the stream, etc. It's just simply an assessment of the depth. It's required of the state to continually assess the uses on streams and, therefore, staff should go back to the UAAs anytime they suspect that the uses are changing or the conditions of the streams are changing.

Chairman Herrmann asked if 30 days is sufficient time for the public to review and agree or disagree?

Mr. Alderman reiterated that 30 days is acceptable.

Mr. Galbraith stated 30 days to review the UAA or the staff recommendation.

Commissioner Minton stated I think we're going to have to work with the 30 day comment period.

Commissioner Minton made a motion to allocate thirty days for public comment and move with that time frame. Commissioner Kelly seconded the motion.

Mr. Galbraith added if staff could post everything that they have done by the 25th that would give them 30 days until August 24 and that would give two weeks then to process those comments and get something in a timely way to the Commission.

Chairman Herrmann added staff is to have a recommendation to the Commission on the 31st, which would then meet the meeting date of September 7.

Mr. Galbraith included that staff will make every effort. They have to close off any submittals by July 14 and then between July 14 and July 25, staff will process as many recommendations as they can and post them. July 25 to August 24 is 30 days for public comments. Then from the 25th to 31st, staff processes those comments and makes final recommendations to the Commission.

All Commissioners and Chairman Herrmann voted yes.

Mr. Galbraith clarified the motion. Cease taking all comments, including UAA's, July 14. Staff will process as many recommendations as they can and post them by July 25. From July 25 to August 24 will be a 30 day public comment period and then staff will process comments and make final recommendations in time, within a week, to allow the Commission seven days to consider them before their September 7 meeting.

Respectfully Submitted,

Edward Galbraith
Director of Staff